Jurisdictional Statement

No. 81-1077

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

ROBERT McCLORY,

Appellant

vs.

EARL NEIL OTTO, et al.,

Appellees

ON APPEAL FROM THE U.S. DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

JURISDICTIONAL STATEMENT OF PLAINTIFF-APPELLANT ROBERT McCLORY

ALBERT E. JENNER, JR.
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350

Pandick Press Midwest, Inc. Chicago • 454-7600

QUESTIONS PRESENTED

This case involves an appeal from a decision by a three-judge court (one judge dissenting), which selected as between three competing proposals, a plan for the reapportionment of Illinois Congressional Districts for the next decade. The following questions are raised by the three-judge court's decision:

1. Did the three-judge court err in choosing as between three proposed Congressional maps, that map which had a maximum deviation of 81 from the district target population of 519,021 (when the other plans had a maximum deviation of 431 and 365, respectively) on the ground that the former map demonstrated "the least deviation from the ideal district population mandated by the 1980 census" and therefore automatically "best satisfies the command of . . . the Constitution"?

2. Did the three-judge court err in making its own determination of what the appropriate Republican-Democratic balance of the Illinois Congressional delegation should be, and then by adopting the map which fit the court's view of what would produce a "politically" fair partisan division?

3. Did the three-judge court in evaluating three proposed Congressional reapportionment maps, each of which demonstrated substantial population equality in each congressional district, err in failing to give adequate weight to the following factors:

   The history of public comment and input to the development of each map.

   Adherence in each map to those established political boundary lines which have historic significance in the state (such as county lines, township lines and city limits).

   The maintenance of constituency-representative relations.

   The encouragement of political participation by minority groups.

List of Parties to the Proceedings Below

Earl Neil Otto

Bernard T. Ysursa

George H. Ryan

Monica Faith Stewart

Arthur L. Turner

Mark Q. Rhoads

Hyman Schneider

Phil Schneider

Patrick Rea

Eleanor T. Colson

Michael J. Howlett

Richard V. Ogilvie

John S. Jackson, III

Augustus A. Savage

Political Action Conference of Illinois

Harold Washington

Robert McClory

Ronald D. Michaelson

J. Phil Gilbert

Carolyn Eyre

John Countryman

Richard Cowen

Joshua Johnson

John J. Lanigan

Michael J. Hamblet

Teresa M. Petrone

Stanley Kusper

State Board of Elections of the State of Illinois

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OPINIONS BELOW

The November 23, 1981 Memorandum Opinion of the three-judge court from which this appeal is taken has not been reported. It has been appended to the Jurisdictional Statement filed with this Court on December 9, 1981, on behalf of George H. Ryan, et al., at Appendix pp. 3-27. Congressman McClory adopts that Appendix as his own.

JURISDICTIONAL GROUNDS IN THIS COURT

This is a direct appeal from a ruling by a three-judge court setting forth a map by which Congressional districts in Illinois shall be reapportioned for the next decade. The jurisdiction of the three-judge court was premised upon the provisions of 28 U. S. C. §§ 1343, 2201, 2202 and 2284.

On December 3, 1981, the clerk of the court entered a judgment mandatorily enjoining the Illinois State Board of Elections to implement that Congressional reapportionment plan known as "Otto Plan, Alternate II." On the same date, Robert McClory, a plaintiff-intervenor in the proceeding below, filed his notice of appeal.

This appeal is brought pursuant to 28 U. S. C. § 1253.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The constitutional and statutory provisions at issue in this case are listed below and are set forth in full in the Appendix to the Jurisdictional Statement filed with this Court on December 9, 1981, on behalf of George H. Ryan, et al., at Appendix pp. 1-2.

United States Constitution

Article I, Section 2

Article I, Section 4

14th Amendment

15th Amendment

United States Code

2 U. S. C. § 2a

42 U. S. C. § 1983

STATEMENT OF THE CASE

This appeal is brought by Robert McClory, Member of Congress from the 13th Congressional District in Illinois, and Ranking Minority Member of the House Judiciary Committee. Congressman McClory supports the Jurisdictional Statement filed with this Court on December 9, 1981 on behalf of George H. Ryan, et al., in this case. The following is Congressman McClory's separate submission.

The history of this case is generally set forth in the Jurisdictional Statement filed with this Court on December 9, 1981, on behalf of George H. Ryan, et al., at pp. 2-6.

In brief, the three-judge court below had before it for consideration three competing proposals for the reapportionment of Illinois Congressional districts for the next decade. The "Ryan" map had been adopted by the Illinois House of Representatives on June 23, 1981. The "Otto" map (with alternate configurations for two Chicago Congressional districts) was drawn by staff members employed by the Democratic Leader of the Illinois House of Representatives and was submitted to the court shortly before the trial commenced. The "Howlett-Ogilvie" map was drawn by a group of incumbent Congressmen and submitted to the court immediately prior to the trial. (That map was later modified with respect to certain Chicago Congressional districts.) On October 30, 1981, Congressman McClory moved for and was granted leave to intervene in this case in order to be heard concerning the impact of the proposed maps on him as a resident and voter in Lake County, Illinois.

Throughout the trial, Congressman McClory advocated the adoption of the Ryan map. He challenged the propriety of the Otto and Howlett-Ogilvie maps on three principal grounds:

> 1. Neither of these maps had been the subject of public commentary and debate. The Ryan map was adopted only after six public hearings were held by the

House Select Committee on Reapportionment, at which 88 witnesses from all over Illinois were heard. The map had the public support of the Illinois Republican leadership as well as minority groups in Chicago. Only the Ryan map had received the affirmative support of one house of the Illinois General Assembly.

2. As between the three competing maps, the Ryan map most strongly adhered to existing county lines and best served to promote strong county government in Illinois.

3. The Ryan map best served the goal, recognized by this Court in *White* v. *Weiser*, 412 U. S. 783, 791 (1973), of maintaining constituency-representative relations.*

Following a five-day trial, the three-judge court on November 23, 1981, issued a Memorandum Opinion selecting as between the three competing maps the "Otto Plan, Alternate II."

As to the first issue raised by Congressman McClory, the three-judge court found that adoption of the Ryan map by the Illinois House of Representatives did not represent a "clear expression of Illinois' reapportionment policy." (Memo Op., Jurisdictional Statement of George H. Ryan, et al., at Appendix p. 21.) The three-judge court did not specifically address Congressman McClory's other contentions.

SUBSTANTIALITY OF THE QUESTIONS PRESENTED

This Court has many times recognized that the right to vote and the right to be represented are significant and inviolate. The questions presented by this appeal relate inextricably with the right to vote and right to be represented.

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* Congressman McClory also argued that the Ryan map best recognized the strong similarities and "community of interest" between Lake and McHenry Counties in Illinois, and that the Ryan map would best promote the voting strength of minority residents, who make up over 10% of the total population of Lake County, Illinois.

The principal issue in this case is occasioned by the development of a technology which permits anyone advocating the adoption of a reapportionment plan to generate maps and population figures of amazing accuracy. Maps are no longer hand drawn and population figures are no longer hand calculated.

All of the maps considered by the three-judge court below were computer generated as presumably will be most, if not all, reapportionment plans which will be considered by this and lower courts in the future. The deviations from population equality were miniscule—no proposed district had more than 365 persons more or less than the target population of 519,021. The largest average deviation from population equality was 136. The smallest was 27. And yet the three-judge court felt that these differences were its "primary concern." (Memo Op., Jurisdictional statement of George H. Ryan, et al., at Appendix p. 11.) It concluded that the plan with "the least deviation from the ideal district population mandated by the 1980 census . . . [automatically] best satisfies the constitutional standard [of 'one person—one vote']." (*Id.* at Appendix p. 15.) This cannot be what the Constitution requires.

It is imperative that this Court take this case to reverse the three-judge court's excessive reliance on the population equality standard and to give guidance to the lower courts on how to evaluate competing maps when all of them, as here, demonstrate substantial population equality for proposed Congressional districts. This Court should make clear that slavish adherence to census figures is not constitutionally required.

It is equally important that this Court delineate for the lower courts those factors, apart from population equality (such as public support, adherence to traditional boundary lines and continuity of governmental services), which must be considered in selecting among competing proposed reapportionment plans, and to rank those factors in order of importance.

It is also important for this Court to take this case in order to restrain the lower courts from becoming embroiled in the political aspects of redistricting. The three-judge court in this case deemed it "proper for us to prefer [the Otto] plan over its rivals" on the grounds that, by deleting two Republican seats, the Otto map would provide "an approximation of the statewide political strengths of the Democratic and Republican parties." (Memo Op., Jurisdictional Statement of George H. Ryan, et al., at Appendix pp. 19-20.) The court also favorably regarded the prediction that future elections held under the Otto plan would "most closely result in an Illinois delegation mirroring [a fifty-fifty split between Republicans and Democrats.]" (*Id.* at Appendix p. 20.)

This Court should take this case to make clear that federal courts should not concern themselves with the likely partisan outcome of elections under proposed reapportionment maps, but should concern themselves exclusively with other factors already identified by this Court—recognition of the public will as it relates to reapportionment, adherence to established political boundary lines, maintenance of established federal-local relationships and the encouragement of political participation by minority groups. Determinations of the proper political makeup of a state's Congressional delegation should be left to the voters or to their legislature. It should not be in the province of the federal courts.

CONCLUSION

For the foregoing reasons, Robert McClory respectfully requests that this Court give plenary consideration to this case, and accept briefs on the merits and oral argument, for resolution.

One of the Attorneys for Robert McClory

ALBERT E. JENNER, JR.
JENNER & BLOCK
One IBM Plaza
Chicago, Illinois 60611
(312) 222-9350